

A House Held in Trust

A Last Will and Testament allows an individual to dispose of his or her real and personal property upon death. When the terms of a Will establish a testamentary trust, it may hold cash and other assets. In certain circumstances, the Will may instruct the deceased's house be held in trust for the benefit of another individual. As such, the Will needs to address management of this property.

Following are some questions to consider during the estate planning process related to holding a house in trust:

- Is the property to be held:
 - for the beneficiary's lifetime,
 - until the beneficiary advises the trustees the property is no longer required,
 - for a certain number of years,
 - until the beneficiary ceases to reside in the property, or
 - unless or until a specific event occurs (e.g. marriage)?
- Who is responsible for payment of taxes, insurance, maintenance, repair and other property-related expenses? Does the beneficiary have the necessary financial means to pay these costs?
- Trustees must monitor the property to ensure all debts and expenses are paid, and the property is not losing value while it is held in trust.
- If the estate is to be responsible for these expenses, the Will should establish a monetary fund sufficient to make payments for the duration of the trust, and to pay the costs associated with disposal of the property when the trust terminates, including any potential tax liability.

- Will the trustee have the right to mortgage the residence if additional liquidity is required?



- Will the beneficiary have the right to direct the sale of the residence and purchase a replacement property using sale proceeds?
- Will the trustee be given discretion to terminate the trust, and dispose of the residence, if it is in the best interest of the estate, i.e. the beneficiary refuses or is unable to properly care for the property?
- When the trust terminates, for whatever reason, how is the property to be disposed of - transferred to certain beneficiaries, or sold and the net sale proceeds distributed to certain beneficiaries.

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